

93D CONGRESS	}	HOUSE OF REPRESENTATIVES	}	REPORT
2d Session				No. 93-1179

WAR CLAIMS ACT AMENDMENTS

JULY 3, 1974.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and
Foreign Commerce, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany S. 1728]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1728) to increase benefits provided to American civilian internees in Southeast Asia, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

That section 5(i)(3) of the War Claims Act of 1948 (50 App. U.S.C. 2004(i)(3)) is amended by striking out "\$60" and inserting in lieu thereof "\$150".

SEC. 2. (a) Section 213(a)(3) of the War Claims Act of 1948 (50 App. U.S.C. 2017(a)(3)) is amended as follows:

"(3) Thereafter, payments from time to time on account of the other awards made to individuals pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment pursuant to this paragraph on account of any award shall not exceed \$500,000."

(b) Section 213(a) of such Act is amended by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (3) the following new paragraph:

"(4) Thereafter, payments from time to time on account of the other awards made to corporations pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment pursuant to this paragraph on account of any award shall not exceed \$50,000."

2. Amend the title so as to read:

An Act to amend the War Claims Act of 1948 to increase benefits provided to American civilian internees in Southeast Asia and to provide for additional payments on awards made to individuals and corporations under that Act.

COMMITTEE AMENDMENTS

The first committee amendment struck out all after the enacting clause of the bill as passed by the Senate and inserted a substitute text. The first section of the substitute text is identical in substance with the bill passed by the Senate and increases from \$60 to \$150 per month the benefits provided to American civilian internees in Southeast Asia. The second section of the substitute text was not contained in the bill passed by the Senate. The new section 2 added by the committee amendment provides for payment in full of individual awards up to a limitation of \$500,000, and for additional payments on awards made to corporations up to a limitation of \$50,000 per award.

The other committee amendment merely conformed the title to reflect the changes made in the text.

PURPOSE AND SUMMARY

This bill amends two sections of the War Claims Act of 1948 to accomplish different purposes. Section 5 is amended to increase the authorized detention benefit for American civilians during the Vietnam conflict from \$60 per month to \$150 per month. The purpose is to raise the detention benefits authorized for civilians who are or were being held as prisoners to the level presently authorized for military personnel. The proposed benefit of \$150 per month for civilians would be equivalent to the current \$5 per day benefit for military personnel. These benefits would be paid from funds which have already been appropriated; approximately \$275,000 would be required.

Section 213(a) of the War Claims Act of 1948 is amended to give a first priority to the payment in full of the remaining individual awards for property losses arising out of World War II, then a second priority to the payment of the remaining corporate awards for similar losses up to the level of \$50,000.

Existing law provides for payment of both individual and corporate awards, in equal amounts up to \$35,000, and on a pro rata basis above that figure. The total of the remaining corporate awards is about \$94.7 million; the total of the remaining individual awards is about \$6.5 million. Therefore, payment on a proportional basis (which is the present rule for the bulk of any payments) would result in the corporate claimants receiving the major part of any remaining funds. The purpose of these amendments is therefore twofold: first, to provide for the settlement of all unpaid individual claims and second, to provide for the payment of the smallest unpaid corporate claims (up to \$50,000) before dividing any remaining funds on a pro rata basis among the rest of the corporate claimants.

No appropriation of Federal funds would be required for the amendments to section 213(a), because all payments of awards certified by the Foreign Claims Settlement Commission pursuant to Title II of the 1948 Act, are required to be paid by the Secretary of the Treasury

out of the War Claims Fund, a trust fund on the books of the Treasury of the United States. This fund was established by the 1948 Act and consists of the net proceeds of German and Japanese assets seized in the United States during World War II under the authority contained in the Trading With the Enemy Act.

COMMITTEE ACTION

On November 7, 1973, the Subcommittee on Commerce and Finance held hearings on four bills to amend the War Claims Act of 1948. H.R. 5895, the Administration proposal, and S. 1728, which passed the Senate on October 8, 1973, amended section 5 of that Act to increase benefits provided to American civilian internees in Southeast Asia. H.R. 1729 and H.R. 4870 amended section 213(a) of that Act to provide for the full payment of certain individual claims under that Act. After executive session the Subcommittee reported S. 1728 with an amendment containing the provisions of H.R. 1729 and H.R. 4870 to give priority to the full payment of individual claims under the 1948 Act.

The full Committee considered S. 1728 and ordered it reported to the House, with additional amendments, by voice vote on June 18, 1974.

BASIS FOR THE LEGISLATION

CIVILIAN INTERNEE BENEFITS

Detention benefits for civilians and members of the U.S. Armed Forces were authorized by the War Claims Act of 1948 to provide a measure of compensation for those Americans captured and held as prisoners of war during World War II. The original law set the benefit rate at \$60 per month for civilians and \$2.50 per day (equivalent to \$75 per month) for military personnel. In 1954 the Act was amended to include internees during the Korean conflict. Another amendment in 1970 (Public Law 91-289) authorized detention benefits for civilian and military internees in Southeast Asia during the Vietnam conflict. The rate for civilian benefits was continued at \$60 for each calendar month.

To qualify for the benefit a civilian must be a United States citizen who was captured in Southeast Asia during the Vietnam conflict or who went into hiding in Southeast Asia in order to avoid capture by a hostile force. The benefit is not authorized for any person who voluntarily, knowingly, and without duress gave aid to or collaborated with or in any manner served any hostile force. The benefit is effective for all periods during which a civilian was interned in Southeast Asia during the Vietnam conflict. The Foreign Claims Settlement Commission determines the amount and validity of benefit claims and provides for payment of adjudicated claims from appropriated funds.

The detention benefit for military personnel was raised by Public Law 91-289, enacted in 1970, and is presently \$2.00 for each day without adequate food and \$3.00 per day for certain other violations of the Geneva Convention of 1949. All of the military prisoners whose claims have been processed by the Foreign Claims Settlement Commission have qualified for and have been paid the total benefit of \$5

per day. No comparable increase in benefits was made in 1970 with respect to civilian American citizens held by a hostile force in Southeast Asia. American civilian prisoners suffered the same deprivations and hardships during the Vietnam conflict as military prisoners. Therefore, it is a matter of equity to give civilians the same detention benefit that is provided under the 1948 Act for military personnel.

INDIVIDUAL AND CORPORATE AWARDS

A brief review of the legislative history of the War Claims Act of 1948 provides a perspective for the amendments giving priority to the full payment of individual awards from the War Claims Fund followed by payment of corporate awards up to \$50,000. In 1948 the Congress enacted the War Claims Act to permit American citizens and corporations incorporated in the United States to receive awards to compensate them for losses suffered as a result of World War II and created the War Claims Fund to provide for the payment of these awards.

The 1948 Act also established a War Claims Commission, now the Foreign Claims Settlement Commission, which was required to make recommendations on the handling of personal injury and property claims arising out of World War II to the President. Legislative recommendations resulted in the enactment of amendments to the 1948 Act in 1962 (Public Law 87-846) which established the initial schedule of priorities for payments from the War Claims Fund. The Foreign Claims Settlement Commission was required to adjudicate each claim and determine the amount of each award in accordance with these priorities.

The law provided for payment in full of all death and personal injury awards, for all property losses of small business concerns, and finally, for all other property loss awards of \$10,000 or less. These awards have all been satisfied in full. For each remaining award over \$10,000 the statute provided that the unpaid balance was to be satisfied on a pro rata basis. The funds available at that time permitted the payment of 61.3 percent of the balance of all remaining awards.

The Act was amended again in 1970 after it became apparent that there would not be sufficient funds available for full payment of every claim as had been originally anticipated. The House-passed bill established two new priorities for the remaining unpaid balances on (1) all awards made to nonprofit organizations, and (2) all awards made to individuals. The Foreign Claims Settlement Commission initially opposed the altered priority schedule on the ground that priority for the nonprofit organizations would be unfair to the small awardees. However, the Commission's opposition was withdrawn when a compromise agreement was incorporated in the Senate bill whereby after payment in full of the nonprofit organizations claims, both individual and corporate claimants would be paid up to \$35,000. Unpaid balances above this amount would be satisfied on a pro rata basis. These provisions were eventually enacted as Title II of the War Claims Act of 1948 (Public Law 87-846).

The accompanying chart lists for each category of property loss claim: the number and amount of the original awards, the amounts paid after the 1962 and 1970 amendments, and the balance due.

AMOUNTS AWARDED AND PAID UNDER THE WAR CLAIMS ACT OF 1948, AS AMENDED

Category of claim	Awards		Amount paid after 1962 amendments	Amount paid after 1970 amendments	Balance due
	Number	Amount			
I. Death and personal injury.....	34	\$510,035	100 percent of award.....		0
II. Small business.....	251	12,026,093			
III. \$10,000 and under.....	5,635	13,059,352			
Total.....	5,920	25,595,480			0
IV. Over \$10,000:					
1. Individuals.....	886	35,276,571	\$10,000 on each award plus 61.3 percent of remain- der.	\$11,000 on each award.	{ \$6,578,916 94,700,830 107,100 0
2. Corporations.....	199	249,441,491			
3. United States.....	1	327,073			
4. Religious, charitable, and nonprofit.....	33	24,159,313			
Total.....	1,119	309,204,448			101,386,846

The statutory provision requiring pro rata payments to individuals and corporations on awards above a certain amount has resulted in the major part of funds used for such pro rata payments going to corporations whose property loss claims are generally larger. The unpaid awards to 186 individuals amount to about \$6.5 million; those to 161 corporations amount to about \$94.7 million. Under existing law, individuals and corporations would receive additional equal payments up to \$24,000, having already received \$11,000, towards each outstanding claim. Above this level the corporations would receive about 93 cents for every one dollar paid out. The War Claims Fund, from which these awards will be paid, can be expected to receive less than the \$20 million currently held by the Office of Alien Property. This amount is still subject to various pending claims. After their resolution and a determination by the Attorney General that the funds are not required to fulfill an obligation imposed by any other provision of law, the remainder will be transferred to the War Claims Fund. Since all unpaid awards total over \$101 million, your Committee understands that the Fund will be insufficient to satisfy many awards.

The funds for the payments from the War Claims Fund under the provisions of the 1948 Act, as amended, have been made available as a matter of grace by Congress. Principles of equity and justice were applied to the drafting of the original schedule of priorities enacted in 1962 and again in 1969 as changing circumstances indicated the need for amendment. All remaining claims, whether individual or corporate, are for property losses. The decision by your Committee to accord first priority to the remaining individual awards is based on several factors.

The type of property loss from which the individual awards are derived has been examined due to the charge that priority to individual award holders would discriminate in favor of stockholders of corporations which were less than 50 percent owned by U.S. nationals. The Foreign Claims Settlement Commission breaks down individual claims into three categories according to the kind of property upon which the claim of loss is based. First, there are 123 unpaid "individual" awards which are "based on loss of property directly owned by an individual."¹ This group comprises two-thirds of the unpaid awards to all individuals. Second, the 16 "mixed" claims by individuals are "based partly on direct ownership of some property and partly

¹ Hearing Record, Serial No. 93-44, at page 31.

on indirect ownership of other property via interests in a corporation or a partnership"² Third, the Commission describes the 47 awards in the "corporate and partnership" category as "claims based solely on loss of corporate or partnership property and brought by individual holders or interests in such entities."³

A study of Commission decisions indicates that the classification of an individual claim as corporate or partnership in nature did not take into account the fact that the majority of these individual losses were "corporate" in form only and involved organizations that did little more than hold a family's assets or at most operate a family business. These "corporations" were often organized only to avoid confiscation of individually held property by the Nazi government in the 1930's. Virtually all these 47 awards involve family organizations or very closely held organizations with only a few principals. These organizations were no more than the alter ego of a family, an individual, or a small group of individuals. Such losses are fundamentally different from the business losses of a large, publicly-held multinational corporation.

In considering the issue of whether payment of individual before corporate awards would discriminate against American corporations and their stockholders, domestic and foreign tax benefits available to awardees are pertinent. The 1948 Act requires the Commission to deduct from the amount of any corporate award exceeding \$10,000 an amount equal to the aggregate of Federal tax benefits derived by such corporation and based on the same property loss for which the award was given. These Federal tax benefits derived from the Internal Revenue Code provisions allowing an income tax deduction for a war or confiscation loss. The intent of this section of the 1948 Act was to prevent the corporation from receiving a double benefit for a single loss. However, there were also substantial foreign tax benefits available to multinational corporations for which the statute did not require a corresponding deduction from an award. Both domestic and foreign tax law benefits were taken in the 1940's by some corporate awardees who thus realized immediate and substantial compensation for their losses before postwar depreciation of the dollar. As a result of the availability of these tax provisions, together with the amounts already paid towards their war claims awards, the corporate claimants, and indirectly their stockholders, have recovered most, and in some cases all, of their World War II losses.

The provisions of the Internal Revenue Code allowing deductions from taxable income for confiscation and war losses were also available to individuals. Several factors resulted in a situation in which none of individual awardees utilized these provisions. Many had no knowledge of Federal tax law or had insufficient income against which to offset the loss at that time. Moreover, the war loss deduction was not available to individuals whose property had been confiscated before December 11, 1941. For this reason many individuals who later were granted awards under the 1948 Act were ineligible to take war loss deductions.

The amendment to the 1948 Act providing for payment of the remaining corporate claims up to the level of \$50,000 was adopted in full Committee executive session. The purpose is to provide for the payment of the smallest remaining corporate claims from any existing

² *Id.*
³ *Id.*

sums in the War Claims Fund after the individual claims have been paid in full. Equitable considerations led your Committee to conclude that the 65 corporate claims with unpaid balances totaling \$50,000 or less should be satisfied before paying the larger remaining corporate awards on a pro rata basis. In reaching this conclusion your committee relied on the list of corporate and partnership claims prepared by the Foreign Claims Settlement Commission, which consists of claims based solely on loss of corporate or partnership property and brought by the corporation or partnership. This list was attached to the letter dated November 23, 1973 sent to the Honorable John E. Moss, Chairman of the Subcommittee on Commerce and Finance, from Wayland D. McClellan, General Counsel of the Foreign Claims Settlement Commission¹. Your committee intends that the payments to the awardees in accordance with the provisions of this legislation shall be made to the appropriate corporate and partnership claimants (insurance and general), as well as to the appropriate individual claimants, so listed in the attachment to Mr. McClellan's letter.

Examination of the nature of the remaining individual and corporate claims thus forms the basis for the Committee's determination that these claims are entitled to preference for equitable reasons. However, in adopting these amendments to existing law, your Committee does not intend to encourage or set any precedent concerning settlement of property loss claims in the field of international law which are within the proper jurisdiction of other committees of the Congress. On the contrary, this bill is designed to provide an equitable solution to the particular facts surrounding the remaining unpaid property loss claims arising out of World War II.

COST ESTIMATE

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), your Committee estimates that no additional expenditures by the United States should be required in carrying out the functions of the Foreign Claims Settlement Commission under the provisions of S. 1728 as amended by your Committee.

EXPLANATION OF LEGISLATION BY SECTION

This explanation is of the bill as reported by your Committee with amendments.

The title of the bill is an Act to amend the War Claims Act of 1948 to increase benefits provided to American civilian internees in Southeast Asia and to provide for additional payments on awards made to individuals and corporations under that Act.

Section 1 of the bill amends section 5(i)(3) of the 1948 Act by striking out "\$60" and inserting in lieu thereof "\$150," thus raising the rate of detention benefits for civilian internees in Southeast Asia to \$150 for each calendar month. Approximately \$275,000 will be required to be paid under this provision from funds which have already been appropriated.

¹ This letter and the list of claims attached is reproduced in the record of the hearing before the Subcommittee on Commerce and Finance on this legislation at pages 31-37.

Section 2(a) of the bill amends section 213(a)(3) of the 1948 Act to provide for payments of awards made to individuals pursuant to section 202 of the 1948 Act, which have not already been compensated in full under section 213(a)(1) or (2), in equal amounts or in the remaining amount of the award, whichever is less. The total payment pursuant to this paragraph on any award must not exceed \$500,000. The information made available to your Committee by the Foreign Claims Settlement Commission indicates that the remaining 187 individual claims are all below the \$500,000 ceiling and that approximately \$6.5 million would be required to satisfy all such claims in full.

Section 2(b) of the bill also amends section 213(a) of the 1948 Act by inserting a new paragraph (4) after paragraph (3). After the remaining individual awards have been compensated in full under the terms of paragraph (3), as amended by this bill, payments shall be made on awards made to corporations pursuant to section 202 and not compensated in full under section 213(a)(1) or (2) in equal amounts or in the remaining amount of the award, whichever is less. The total payment pursuant to this paragraph on any award must not exceed \$50,000. Approximately \$5.8 million would be required to satisfy the 65 corporate claims of \$50,000 or less, according to an estimate made from the information supplied to your Committee by the Foreign Claims Settlement Commission.

Section 2(b) of the bill redesignates paragraph (4) of section 213(a) of the 1948 Act as paragraph (5). This provision of existing law states that payments on the unpaid balance of each remaining award shall be made on a proportional basis from the remaining sums of the War Claims Fund. The pro rata share paid to each corporate awardee will vary according to the size of the unpaid balance in relation to the amount of money remaining in the War Claims Fund. Such awards would be corporate in nature due to the provisions of this bill. Your Committee estimates that approximately \$88.9 million would be required to satisfy the remaining 96 corporate claims in full.

AGENCY COMMENTS

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES,
Washington, D.C., April 18, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Further reference is made to your letter of March 26, 1973, requesting a report by the Foreign Claims Settlement Commission on the bill H.R. 5895, 93d Congress, "A Bill To increase benefits provided to American civilian internees in Southeast Asia."

The purpose of the bill is to increase the rate of detention benefits payable under section 5(i)(3) of the War Claims Act of 1948, as amended, to civilian American citizens held as prisoners in Southeast Asia, from \$60 per month as presently authorized to \$150 per month.

Section 5(i) of the War Claims Act of 1948, as amended, authorizes the Foreign Claims Settlement Commission to determine the amount and validity, and provide for payment, of any claim filed by, or on behalf of, any civilian American citizen for detention benefits at the rate of \$60 per month for any period of time after February 27, 1961 during which he was held as a prisoner, internee, or hostage, in South-

east Asia by any force hostile to the United States, or who went into hiding to avoid capture or internment by such hostile force. Section 5 of the Act also authorized the settlement of claims of certain civilian American citizens who were held as prisoners, internees or hostages, during World War II and the Korean conflict. These claimants were also paid at the rate of \$60 per month.

Members of the Armed Forces of the United States who were captured and held as prisoners of war during World War II, and the Korean conflict were paid benefits at the aggregate rate of \$2.50 per day for each day they were held as prisoners of war and where there was a violation by the detaining enemy force of the Geneva Convention of 1929 in regard to the food rations, forced labor and the treatment of such prisoners.

The Congress, however, in the enactment of legislation (Public Law 91-289, approved June 24, 1970) providing for the settlement of similar claims by prisoners of war of the Vietnam conflict, increased the rate of compensation to \$5.00 per day for every day members of the Armed Forces of the United States were held as prisoners of war during such conflict. No comparable increase in benefits was made with respect to the civilian American citizens held by a hostile force in Southeast Asia.

The Commission would have no objections to the proposal to increase the civilian internee benefits to \$150 per month inasmuch as the increase would be equal to those presently being paid to military prisoners of war in Vietnam. This arrangement would be more equitable than that currently in effect.

The proposed legislation would affect approximately 60 civilian American citizens in Southeast Asia and the increase in the amount of compensation payable under the legislation from \$60 to \$150 would total approximately \$275,000. There would be no increase to the Commission in the cost of administering the civilian internee program in case the legislation is enacted.

The Commission is in favor of the proposed amendment to section 5(i)(3) of the War Claims Act of 1948, as amended by H.R. 5895 and recommends that the bill be enacted by the Congress.

The Office of Management and Budget has advised that there is no objection to submission of this report and that enactment of H.R. 5895 would be consistent with the Administration's objectives.

Sincerely yours,

LYLE S. GARLOCK, *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., April 18, 1973.

HON. HARLEY STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the Committee's request for the views of this Office on H.R. 5895, "To increase benefits provided to American civilian internees in Southeast Asia."

The purpose of this bill is to increase the detention payment authorized under the War Claims Act for American civilians interned in Southeast Asia from \$60 a month to \$150 a month.

The Department of State and the Foreign Claims Settlement Commission are submitting reports which recommend enactment of the bill. The agency reports indicate that the increased detention payment proposed for civilian internees would parallel the amount now provided military personnel who were prisoners of war.

We concur in the views expressed by these agencies and, accordingly, recommend enactment of the bill. Enactment of H.R. 5895 would be consistent with the Administration's objectives.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF STATE,
Washington, D.C., April 9, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives.

DEAR MR. CHAIRMAN: In further reference to your letter of March 26, 1973 concerning H.R. 5895, a bill "To increase benefits provided to American civilian internees in Southeast Asia", we would like to thank you for the introduction of this legislation which the Department strongly supports.

The bill would amend the War Claims Act of 1948 to increase the detention benefit for civilians authorized by section 5 of that Act from \$60 per month to \$150 per month. The benefit is payable to American civilians or their survivors who were captured in Southeast Asia during the Vietnam conflict. The detention benefit for military personnel was raised by P.L. 91-289, enacted June 24, 1970, and is presently \$2.00 for each day without adequate food and \$3.00 per day for certain other violations of the Geneva Convention of 1949. The proposed benefit of \$150 per month for civilians would be equivalent to the \$5 per day benefit for military personnel.

The bill would benefit only about 60 persons—the number known or believed to have been captured in Southeast Asia during the recent conflict. The total cost of this bill is estimated to be \$275,000 which would be paid from appropriated funds by the Foreign Claims Settlement Commission.

We believe the benefits provided by this bill are fully justifiable and that they will help equate civilian and military benefits of this type. We submitted a more detailed explanation of this bill with our letter to the Speaker of March 2, 1973 which I understand has been referred to your Committee. We stand ready to provide any additional information you may desire and recommend that your Committee give prompt and favorable consideration to H.R. 5895.

The Department has been informed by the Office of Management and Budget that the enactment of H.R. 5895 would be consistent with the Administration's objectives.

Sincerely yours,

MARSHALL WRIGHT,
Acting Assistant Secretary for Congressional Relations.

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES,
Washington, D.C., June 14, 1973.

Hon. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce, House of
Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in further reference to your February 12, 1973 request for a report by the Foreign Claims Settlement Commission on H.R. 1729, 93d Congress, "A Bill to amend section 213(a) of the War Claims Act of 1948 to provide for the full payment of certain individual claims under that Act."

The subject bill would amend paragraph (3) of section 213(a) of the War Claims Act of 1948, as amended (76 Stat. 107, 50 U.S.C. App. 2017-2017p (1970), hereinafter referred to as "the Act"), which authorizes payment in equal amounts on awards not compensated in full under the priority payment schedules of paragraphs (1) and (2) of that section, by restricting such payments to awards of individuals. At the present time, both individual and corporate awardees are eligible for such payments without preference.

The bill also eliminates the provision in paragraph (3) which authorizes payments of up to \$35,000 before prorated payments may be made. The thrust of the bill is thus to direct payments in equal amounts on awards to individuals not fully compensated previously until all such awards have been paid. Thereafter, the remainder of the awards having outstanding balances, e.g., the awards to corporations, would be paid and then only under the provisions of paragraph (4) which authorizes pro-rata (not equal) payments. The distinction between modes of payment is not nearly as significant as the establishment of a payment priority for awards to individuals. A review of the award payment provisions as they now exist may clarify this significance.

Paragraph 1 of section 213(a), as constituted when the Act was passed, directed the Secretary of the Treasury to pay in full (1) the awards granted in death and disability claims; and (2) the awards granted claimants who qualified as small business concerns within the meaning of the Small Business Act. Thereafter, paragraph (2) of that section directed the Secretary to make payments on all other awards up to \$10,000.00 and after such payments had been made, paragraph (3) directed prorated payments on the unpaid balances of awards granted under section 202 of the Act and certain recertified Hungarian war damage awards granted under section 303(1) of the International Claims Settlement Act of 1949, as amended.

The General War Claims Program under the Act was completed on May 17, 1967 and the Commission granted awards which totaled approximately \$334.8 million. The recertified Hungarian war damage awards totaled approximately \$5.7 million and one award of \$500,000.00 was certified to be paid to the Jewish Restitution Successor Organization under specific language of the statute. The total amount of these awards was approximately \$341 million.

At the time that the program was completed, the money available in the War Claims Fund permitted the Secretary of the Treasury to pay in full the awards granted priority, i.e., death, personal injury and small business. The fund then was sufficient to make payments on all other awards of up to \$10,000.00 plus 61.3% of the amounts of such awards in excess of the \$10,000.00.

On December 24, 1970, Public Law 91-571 (84 Stat. 1503) was enacted, which amended paragraph (1) of section 213(a) of the Act by additionally granting priority of payment to awardees determined by the Commission to have been "A nonprofit organization operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes," on the date of loss, damage or destruction which formed the basis for award. The Commission was directed to recertify such awards to the Secretary of the Treasury. Public Law 91-571 also established a new paragraph (3) which authorized additional payments, not to exceed \$35,000, on all other awards, such payments to be in the same amount for each award or in the amount of the award, whichever was less. The former paragraph (3), directing pro-rata payments on non-priority awards, became the new paragraph (4).

In reporting on the proposals which upon enactment became Public Law 91-571, the Commission initially opposed the enactment of the legislation giving priority of payment to the social welfare, religious, charitable and educational organizations on the ground that it would be unfair to the small awardees. However, that opposition was withdrawn when the \$35,000.00 figure was established before prorated payments would be commenced. That provision assured that all small awardees, individual or corporate, would be paid in full. Such awardees no doubt suffered greater losses than others despite the fact that the property involved may not have been as extensive.

The Commission recertified the awards granted to those claimants who qualified as nonprofit organizations operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes. There were thirty-three such organizations and the awards totaled \$24,159,313.66. After those payments were made, the amount remaining in the War Claims Fund permitted the Secretary of the Treasury to authorize additional payments to all other awardees, individuals and corporations, in amounts up to \$11,000.00, pursuant to paragraph (3).

Currently there are approximately 348 individual and corporate award holders with unpaid balances totaling about \$101,279,746. Of the 348 award holders having unpaid balances, there are 186 individuals with unpaid balances totaling \$6,578,916.00; and 161 corporate award holders with total unpaid balances of \$94,700,830.

May I point out that under the provisions of section 201(c) of the Act, corporations were eligible to file claims for property losses if they were organized under the laws of the United States, or any State, the Commonwealth of Puerto Rico, the District of Columbia, or any territory or possession of the United States and in which more than 50 per centum of the outstanding capital stock or other proprietary or similar interest was owned directly or indirectly by natural persons who were nationals of the United States. Individual stockholders of such corporations were precluded from filing for losses based on their respective stockholder interests.

On the other hand, individual stockholders who were nationals of the United States were permitted under Section 205(b) of the Act to file claims for losses sustained by non-United States national corporations based on their stockholder or other proprietary per centum interests therein. Thus, while many awards have been granted to individuals, a number have been based on losses sustained by foreign corporations which could not qualify as United States national corporations.

The Commission has conducted a study of the claims in which there are outstanding unpaid balances on awards. Of the 187 individual award holders who have unpaid balances, 56 represent awards based on stockholders interest in foreign corporations or other business entities. The unpaid balances in such claims total approximately \$2,151,748.00. There are an additional 30 award holders with unpaid balances totaling approximately \$2,701,726.00, which represent losses based on interests in foreign corporations or other business entities and privately-owned property. Most of these awards are based on substantial holdings in foreign corporations or other business entities whose properties were lost, damaged or destroyed as a result of military operations during World War II.

The bill does not set forth whether it is intended to treat awards to individuals who were the indirect owners of property through their stockholder interests in foreign corporations in the same manner as awards to individuals who directly owned property that was lost, damaged or destroyed as a result of military operations during World War II. The Commission is of the opinion that such a preferential treatment would be discriminatory and unfair to those corporations that qualified as United States nationals within the meaning of the Act, and that it would defeat the basic purpose of the payment provisions of the Act as it is presently constituted.

In effect, therefore, this proposal would result in the inequitable situation under which United States national corporations would be discriminated against in favor of one group of award holders, including those whose interests are indirect through foreign corporations, in the case that additional money becomes available for deposit in the War Claims Fund.

In light of the foregoing, the Foreign Claims Settlement Commission does not favor the enactment of H.R. 1729.

Advice has been received from the Office of Management and Budget that there would be no objection to the presentation of this report to your Committee.

Sincerely yours,

LYLE S. GARLOCK, *Chairman.*

DEPARTMENT OF JUSTICE,
Washington, D.C., June 28, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 1729, a bill "To amend section 213(a) of the War Claims Act of 1948 to provide for the full payment of certain individual claims under that Act."

Section 213(a) of the War Claims Act of 1948 (76 Stat. 1111, 50 U.S.C. App. 2017l) establishes priorities for the payment by the Secretary of the Treasury from the War Claims Fund of awards made pursuant to Section 202 of the Act (50 U.S.C. App. 2017a). Under existing law, paragraph (1) of Section 213(a) gives first priority to the payment in full of awards made pursuant to Section 202(d) (1) and (2) to certain persons (or their relatives) killed or injured during

World War II, and thereafter of any award made pursuant to Section 202(a) to certified small businesses and certain nonprofit organizations.

Paragraph (2) next gives priority to payments on account of other awards made pursuant to Section 202, with payments to be "in an amount which shall be the same for each award or in the amount of the award, whichever is less," within a \$10,000 limitation on any award.

Paragraph (3) next gives priority to payments on other awards made to individuals and corporations pursuant to Section 202 and which have not been compensated in full under paragraphs (1) and (2). These payments shall be the same for each award or in the amount of the award, whichever is less, with the limitation that payment on any award shall not exceed \$35,000.

The bill, H.R. 1729, without otherwise altering the existing order of priority of payment, would remove the \$35,000 limitation on individual payments made under paragraph (3) and also delete corporations from the priority category of paragraph (3).

This Department is not in a position to judge the possible effect of the bill on payments by Treasury under Section 213(a) on awards made by the Foreign Claims Settlement Commission under Section 202.

With regard to possible funding of the bill, Section 39 of the Trading With the Enemy Act, as amended (50 U.S.C. App. 39) requires the Attorney General to transfer the net proceeds of German and Japanese property to the War Claims Fund which in his discretion are not required to fill obligations imposed under the Act or any other provision of law, including the payment of claims in the Office of Alien Property and which claims are not the subject to any judicial action or proceeding. The proceeds of vested property currently held by the Office of Alien Property amount to about \$20,000,000. These funds for the most part are subject to pending litigation, private bills and various claims. When these pending matters have been resolved, the balance of the remaining assets, if any, will be transferred to the War Claims Fund. There can be no assurance that any substantial portion of the \$20 million will be available for such transfer or any assurance as to when such transfer can be made. According to our information, the War Claims Fund has been insufficient by an amount far in excess of the above \$20 million to make full payment on awards already allowed by the Foreign Claims Settlement Commission.

Whether this proposed legislation should be enacted involves questions as to which the Department of Justice defers to the Foreign Claims Settlement Commission.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Cordially,

MIKE McKEVITT,
Assistant Attorney General, Legislative Affairs.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., July 27, 1973.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce, House of
Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your requests of February 12, 1973 and March 13, 1973 on two bills H.R. 1729, "To amend section 213(a) of the War Claims Act of 1948 to provide for the full payment of certain individual claims under that Act," and H.R. 4870, "To amend the War Claims Act of 1948, as amended."

For the reasons set out in the report of the Foreign Claims Settlement Commission on H.R. 1729, the Office of Management and Budget is opposed to the enactment of either H.R. 1729 or H.R. 4870, bills having essentially similar purposes.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF STATE,
Washington, D.C., June 14, 1973.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce, House of
Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of February 12, 1973 enclosing for the comments of the Department of State copies of H.R. 1729, a bill "To amend section 213(a) of the War Claims Act of 1948 to provide for the full payment of certain individual claims under that Act."

The bill, if enacted, would amend paragraph (3) of section 213(a) of the War Claims Act of 1948 (50 App. U.S.C. 2017(1)(a)) and thereby provide payments from time to time on awards made under section 202 and not compensated in full under paragraph (1) or (2) in an amount which shall be the same for each award or in the amount of the award, whichever is less.

The Department of State has carefully studied the report of the Foreign Claims Settlement Commission of the United States on H.R. 1729 and concurs in its comments and recommendations regarding the bill.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely yours,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WAR CLAIMS ACT OF 1948

* * * * *

INTERNEES

SEC. 5. (a) * * *

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(i)(1) As used in this subsection—

(A) the term “Vietnam conflict” relates to the period beginning on February 28, 1961, and ending on such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress; and

(B) the term “civilian American citizen” means any person who, being then a citizen of the United States, was captured in Southeast Asia during the Vietnam conflict by any force hostile to the United States, or who went into hiding in Southeast Asia in order to avoid capture or internment by any such hostile force, except (i) a person who voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any such hostile force, or (ii) a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

(2) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by, or on behalf of, any civilian American citizen for detention benefits for any period of time subsequent to February 27, 1961, during which he was held by any such hostile force as a prisoner, internee, hostage, or in any other capacity, or remained in hiding to avoid capture or internment by any such hostile force.

(3) The detention benefits allowed under paragraph (2) of this subsection shall be at the rate of **[\$60]** *\$160* for each calendar month.

(4) The detention benefits allowed under paragraph (2) of this subsection shall be allowed to the civilian American citizen entitled thereto, or, in the event of his death, only to the following persons:

(A) the widow or husband if there is no child or children of the deceased;

(B) the widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares;

(C) the child or children of the deceased in equal shares if there is no widow or dependent husband.

(5) Any claim allowed by the Commission under this subsection shall be certified to the Secretary of the Treasury for payment out of funds appropriated pursuant to this subsection, and shall be paid to the person entitled thereto, except that if a person entitled to payment under this section is under any legal disability, payment shall be made in accordance with the provisions of subsection (c) of this section.

(6) Each claim filed under this section must be filed not later than three years from whichever of the following dates last occurs:

(A) the date of enactment of this subsection;

(B) the date the civilian American citizen by whom the claim is filed returned to the jurisdiction of the United States; or

(C) the date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States.

The Commission shall complete its determinations for each claim filed under this subsection at the earliest practicable date, but not later than one year after the date on which such claim was filed.

(7) There are authorized to be appropriated such amounts as may be necessary to carry out the purposes of this subsection, including necessary administrative expenses.

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PAYMENT OF AWARDS; PRIORITIES; LIMITATIONS

SEC. 213. (a) The Secretary of the Treasury shall pay out of the War Claims Fund on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority:

(1) Payment in full of awards made pursuant to section 202(d)(1) and (2), and thereafter of any award made pursuant to section 202(a) to any claimant (A) certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended, or (B) determined by the Commission to have been, on the date of loss, damage, or destruction, a nonprofit organization operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes.

(2) Thereafter, payments from time to time on account of the other awards made pursuant to section 202 in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment made pursuant to this paragraph on account of any award shall not exceed \$10,000.

(3) Thereafter, payments from time to time on account of the other awards made to individuals [and corporations] pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment pursuant to this paragraph on account of any award shall not exceed [\$35,000] \$500,000.

(4) *Thereafter, payments from time to time on account of the other awards made to corporations pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment pursuant to this paragraph on account of any award shall not exceed \$50,000.*

[(4)] (5) Thereafter, payments from time to time on account of the unpaid balance of each remaining award made pursuant to section 202 or recertified pursuant to subsection (b) of section 209 which shall bear to such unpaid balance the same proportion as the total amount in the War Claims Fund and available for distribution at the time such payments are made bears to the aggregate unpaid balances of all such awards. No payment made pursuant to this paragraph on account of any award shall exceed the unpaid balance of such award. Payments heretofore made under section 310 of title III of the International Claims Settlement Act of 1949, as amended, on awards made against the Government of Hungary under section 303(1) of title III of the International Claims Settlement Act of 1949, as amended, and recertified under subsection (b) of section 209, shall be considered as payments under this paragraph and no payment shall be made on any recertified award until the percentage of distribution on awards made under section 202 exceeds the corresponding percentage of distribution on such recertified award: *Provided*, That no payment made on awards recertified under subsection (b) of section 209 shall exceed 40 per centum of the amount of the award recertified.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purpose of making any such payments, other than under section 213(a)(1), an "award" shall be deemed to mean the aggregate of all awards certified for payment in favor of the same claimant.

(d) If any person to whom any payment is to be made pursuant to this title is deceased or is under a legal disability, payment shall be made to his legal representative, except that if any payment to be made is not over \$1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates.

(e) Payment on account of any award pursuant to this title shall not, unless such payment is for the full amount of the award, extinguish any rights against any foreign government for the unpaid balance of the award.

(f) Payments made under this section on account of any award for loss, damage, or destruction occurring in the Commonwealth of the Philippines shall not exceed the amount paid on account of awards in the same amount under the Philippine Rehabilitation Act of 1946.

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SUPPLEMENTAL VIEWS BY MR. KUYKENDALL TO S. 1728,
WAR CLAIMS ACT AMENDMENTS

The history of the War Claims Act and the facts concerning the effect of the bill as reported are fully and accurately explained in the body of the report, but certain implications of this legislation should be set forth here.

If present law retiring all claims up to \$35,000 had been fully implemented, there would then remain only 43 individual claims not fully paid, and these claimants would have received over 61% and as high as 79% of their original awards. This bill eliminates the \$35,000 ceiling, and all individual claims of whatever size will be paid in full.

It is questionable public policy to grant legitimate individual claims a preference over legitimate corporate claims, just as it would be to give the claims of the corporations priority over those of the individuals. Congress should consider very seriously whether it wishes to establish the precedent that the claims of companies are inferior to those of individuals.

But this bill goes even further. If there is any rationale to the proposal, it must be on the basis that one set of claims (individual) has more basic merit justifying a preference over another set of claims (corporate). Such a rationale, if worthy of acceptance, cannot account for the fact that this bill proceeds to favor small corporate claims over large corporate claims. Such a scheme cannot commend itself as good law or simple justice. It must be based on a premise that the more one lost, the less entitled he is to reimbursement. At the very least, the distinction between corporations should be eliminated.

It is pointed out correctly in the report that individuals had tax benefits available as well as corporations, but it seems to argue that no individual claimants are known to have used them and that this failure creates some kind of special equity.

Where losses fall upon large numbers and classes of victims, and a limited amount of recovered funds is available to satisfy those losses, it seems that fair and equal treatment requires a sharing in that fund in proportion to the established losses.

DAN KUYKENDALL.

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